

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SPY OPTIC, INC., a California corporation,
Plaintiff,
v.
WEST COAST DEALS, INC., a California corporation, dba WWW.HBSUNGLASSCOMPANY.COM; and
DOES 1 through 5, inclusive,
Defendants.

WEST COAST DEALS, INC., a California corporation, dba WWW.HBSUNGLASSCOMPANY.COM,
Counterclaimant,
v.
SPY OPTICS, INC., a California corporation, and ROES 1 through 5, inclusive,
Counterdefendants.

Civil No. 08CV0384 IEG(RBB)
NOTICE AND ORDER FOR EARLY
NEUTRAL EVALUATION CONFERENCE

IT IS HEREBY ORDERED that an early neutral evaluation of your
case will be held on June 6, 2008, at 10:00 a.m. in the chambers of

1 United States Magistrate Judge Ruben B. Brooks, United States
2 Courthouse, 940 Front Street, Room 1185, San Diego, California.

3 Pursuant to Rule 16.1(c) of the Local Rules of the United
4 States District Court for the Southern District of California, all
5 parties, claims adjusters for insured Defendants and non-lawyer
6 representatives with full and unlimited authority¹ to enter into a
7 binding settlement, as well as the principal attorneys responsible
8 for the litigation, must be present and legally and factually
9 prepared to discuss and resolve the case. Corporate counsel shall
10 not appear on behalf of a corporation as the party representative
11 who has the authority to negotiate and enter into a settlement.
12 Failure to attend or obtain a proper excusal will be considered
13 grounds for sanctions. (Where the suit involves the United States
14 or one of its agencies, only counsel for the United States with
15 full settlement authority need appear.) (If Plaintiff is
16 incarcerated in a penal institution or other facility, the
17 Plaintiff's presence is not required and Plaintiff may participate
18 by telephone. In that case, defense counsel is to coordinate the
19 Plaintiff's appearance by telephone.)

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23 ¹ "Full authority to settle" means that the individuals at
24 the settlement conference be authorized to fully explore settlement
25 options and to agree at that time to any settlement terms
26 acceptable to the parties. Heileman Brewing Co., Inc. v. Joseph
27 Oat Corp., 871 F.2d 648 (7th Cir. 1989). The person needs to have
28 "unfettered discretion and authority" to change the settlement
position of a party. Pitman v. Brinker Int'l, Inc., 216 F.R.D.
481, 485-86 (D. Ariz. 2003). The purpose of requiring a person
with unlimited settlement authority to attend the conference
includes that the person's view of the case may be altered during
the face-to-face conference. Pitman at 486. A limited or a sum
certain of authority is not adequate. Nick v. Morgan's Foods,
Inc., 270 F.3d 590 (8th Cir. 2001).

1 Plaintiff's(s') counsel shall give notice of the early neutral
2 evaluation conference to all defendants filing an answer after the
3 date of this notice.

4 All conference discussions will be informal, off the record,
5 privileged and confidential. Absent good cause shown, if any
6 party, counsel or representative fails to promptly appear at the
7 settlement conference, fails to comply with the terms of this
8 Order, including the failure to timely provide the settlement
9 conference memoranda WHEN REQUESTED, is substantially unprepared to
10 meaningfully participate in the settlement conference, or fails to
11 participate in good faith in the settlement conference, the
12 settlement conference may be vacated and sanctions may be imposed
13 pursuant to Rules 16(f) and 37(b)(2)(B), (C), and (D), Federal
14 Rules of Civil Procedure.

15 In the event the case does not settle at the early neutral
16 evaluation conference, the parties shall also be prepared to
17 discuss the following matters at the conclusion of the conference:

18 1. Any anticipated objections under Federal Rules of Civil
19 Procedure 26(a)(1)(E) to the initial disclosure provisions of
20 Federal Rule of Civil Procedure 26(a)(1)(A-D);

21 2. The scheduling of the Federal Rule of Civil Procedure 26
22 (f) conference;

23 3. The date of initial disclosure and the date for lodging
24 the discovery plan following the Rule 26(f) conference; and

25 4. The scheduling of a case management conference pursuant to
26 Federal Rule of Civil Procedure 16(b).

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1 The Court will issue an order following the early neutral
2 evaluation conference addressing these issues and setting dates as
3 appropriate.

4 Questions regarding this case may be directed to the
5 magistrate judge's research attorney at (619) 557-3404.

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7 Dated: April 30, 2008


RUBEN B. BROOKS
United States Magistrate Judge

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9 cc: All Parties of Record
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27 A Notice of Right to Consent to Trial Before a United States
28 Magistrate Judge is attached for your information.

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**NOTICE OF RIGHT TO CONSENT TO TRIAL BY UNITED STATES
MAGISTRATE JUDGE**

In accordance with the provisions of 28 U.S.C. § 636(c), you are hereby notified that a United States Magistrate Judge of this district may, upon the consent of all parties, conduct any or all proceedings, including a jury or non-jury trial, and order the entry of a final judgment. Consent forms are available in the Clerk's office. Counsel for the Plaintiff shall be responsible for obtaining the consent of all parties, should they desire to consent.

You should be aware that your decision to consent or not to consent is entirely voluntary and should be communicated solely to the Clerk of the Court. Only if all parties consent will the district judge or magistrate judge to whom the case has been assigned be informed of your decision.

Judgments of the United States Magistrate Judges are appealable to the United States Court of Appeals in accordance with this statute and the Federal Rules of Appellate Procedure unless the parties at the time of their consent to trial before a magistrate judge agree upon review by the United States District Court.